

# The Case of William Mildmay, Esq;

Respondent to the Petition and Appeal of *Thomas Ducket* Esq; *Appellant*.

Humbly offered to the Consideration of the Right Honourable the Lords Spiritual and Temporal, in PARLIAMENT assembled.

**W**illiam Mildmay being intituled to 6000 *l.* and Interest, and Profits received out of Leases at *Highbury* and *Islington*, which was Devise'd by the Lady Mildmay, his Mother, to Sir *Jeremy*, and Dr. *Whitchcot*, and Mr. *Clutterbuck*, Trustees, to pay thereout to the said William 400 *l.* per Annum for Maintenance, and, after Charges deducted, the residue to be laid out in a Purchase, in the said Trustees names, to be settled to the use of William for Life, and to his first, and other Sons in Tail, with Remainder to *Henry Mildmay*, his younger Brother, and his Issue Male in like manner. And the said Lady Mildmay having given the Trustees 5000 *l.* to be laid out in Land, to be settled on her Daughter *Anne-Margaret*, and if she dyed without Issue, to the same Uses as the purchased Premises were to be: of which 5000 *l.* 3500 *l.* was laid out in a Purchase of the Mannor of *Henshead*, in the Trustees names, and 1500 *l.* remained in Money, and *Anne-Margaret* being dead without Issue, and *William Mildmay*, having from his Mothers death in 1656. been carefully looked after by the Trustees, and the Lady *Hungerford*, his Aunt, to whom he was Heir at Law, and who had placed him at the University of *Cambridge*, and by an Oath charged a Sober man with the care of him, he being weak in Understanding.

About 1665. Mr. *Ducket* being some Kin to him, got him to his House near *Cambridge*, when the Visitation was there, and perswaded him to live with him; and having in 1667. and 1668. got him to make Wills, and give his Estate to Mr. *Ducket* and his Children, and, upon pretence of Kindness and Friendship to him, advised him to call the Trustees to an Account, seeing the Purchases were not made, and to make him, the said Mr. *Ducket*, his Attorney for that purpose: But *Ducket*, having a Design upon the Estate, got a Deed of Gift of his whole Estate, upon consideration to find him two Servants, Diet, and keep him two Horses, and give him 50 *l.* per Annum for Expences.

And that Deed was in nature of a Letter of Attorney, to sue for the Estate, but to *Ducket's* own Use, wherein was a Covenant not to release any Money but by *Ducket's* Consent, or to revoke the Letter of Attorney, and every year, till the Estate received in, to give another such Deed.

In 1668. *Ducket* exhibited a Bill against the Trustees in *William Mildmay's* name, and the Trustees acquainted the Court, that they feared a Design upon him, but Mr. *Ducket* being examined as a Witness in that Cause, and swearing that the said Deed was by Law revocable, and that he loved *William Mildmay* so well, that whenever he Remanded it, he would comply. In May 1669. it was Decreed,

That the Trust be performed according to the Lady Mildmay's Will in all things: and onely *Clutterbuck* having acted in the Trust, he was to account for the 6000 *l.* and Profits, and Rents of the Leases: And what due upon the Account, after the Arrears of the 400 *l.* per Annum paid, to be applied according to the Trust, and laid out in purchasing Lands in a Year.

Within a Month after that Decree made, there was an Order made in the *Chancery*, which was in effect to destroy the Decree, viz. That the Money should be put out on Security to be proposed by *William Mildmay*: which doing Mr. *Ducket's* Business, he in a Month gets *Clutterbuck's* Account stated in general, Received 14029 *l.* and disbursed 5440 *l.* and so remains in his hands 7480 *l.* without any particular of Receipts or Payments. And the same day the Report confirmed by consent.

And in October 1669. *Henshead*, by reason of *Anne-Margaret's* Death without Issue, and Sir *Robert Brook* her Husband's Death, coming to *William Mildmay*, *Ducket* got the like Deed of Gift again, as before, and then he procures another Order, That the 7480 *l.* should be put out, on Security to be proposed by *William Mildmay*, and allowed by the Master. And a Report from Sir *Mundiford Bramstone*, That *Clutterbuck* should assign Securities he had from Sir *Robert Brook* for 1796 *l.*

And for so much *Ducket* makes *William* release *Clutterbuck*. But the Master Report mentions not to whom the Money was lent.

But it was put out, 2000 *l.* to *Henry Mildmay*, 500 *l.* to *Ducket*, and 300 *l.* to the Mr. upon their own Securities, taken to *William Mildmay*, and Sir *Robert Brook's* Security was assigned to *William Mildmay* without mention of the Trust.

And *Ducket* having vested that 2800 *l.* and 1796 *l.* in *William Mildmay*, without any Trust appearing in the Securities, and having received 800 *l.* before, and other Goods and Moneys of *William Mildmay's*, to make ill sure to himself; *Ducket* having turned away the Tutor appointed by the Lady *Hungerford* to take care of Mr. *Mildmay*.

Jan. 12. 1670. Gets an absolute Assignment from *William Mildmay* of *Brook's* Security, for 1796 *l.* and *Henry Mildmay's* and the Master's Securities to himself, and a General Release. *Ducket* having before got from him also a Lease for 99 years, of the *Henshead* Estate and Fine, which Estate cost 3500 *l.*

In 1672. *Clutterbuck* being to pay 2883 *l.* residue of the Money in his hands, the Mr. allowed Securities for that also, proposed by *Ducket*, taken in *William Mildmay's* name, but never said who they were, nor to this day can it be learned, other than that *Henry Mildmay* had 500 *l.* and *Ducket* 300 *l.* more, upon their own Recogn. and thereupon *Clutterbuck* is discharged.

And in 1673. *Ducket* received in all the Money (except *Henr. Mildmay's* and Sir *Mundiford Bramstone's*) and also 1500 *l.* more which Sir *Robert Brook* owed, as the Residue of the 5000 *l.* And having procured *William Mildmay* to Discharge and Assign those Securities, and to discharge *Clutterbuck*: by which *Ducket* let *Clutterbuck* get 600 *l.* (300 *l.* by a miscomputation, and near 300 *l.* as an Abatement to pay the rest) *Ducket* having then the whole Moneys and Securities in his hands.

In Octob. 1674. Procured Will. *Mildmay* to make him a General Release, to Convey *Henshead* Estate by Lease, and Release to him and his Heirs, and to grant him all his Goods, Chattels, and Debts, Money, Plate, Jewels (except his wearing Apparel) And for this Mr. *Ducket* pretends he Covenanted to provide Diet for *William Mildmay*, and two Servants, and two Horses, and to pay him 50 *l.* per Ann. for Pocket Expences. Of which

Of *Clutterbuck* --- 7480.  
*Henshead* Lands --- 3500.  
Remainder of the 5000 *l.* --- 1500.

50 *l.* per Ann. 30 *l.* per Ann. was settled on Mr. *Clerk*, that had been *William's* Servant, for his Life. All which Provisions by Mr. *Ducket* (in the Countrey) could not come to 150 *l.* per Annum, but for it he hath got in Money, Land, and Securities, as in the Margent, 12480 *l.* And had received the Interest thereof, from 1668. and the Profits of *Henshead* Estate, and of *Highbury* and *Islington* Leases, besides several Goods, Jewels, and Plate: Whereby the Trust of the Lady *Mildmay's* Will was in danger wholly to be Defeated: But the said *William* having married into a good Family, and a Deserving Wife, he and Dr. *Whitchcot*, the surviving Trustee, and other Persons, as Trustees, by Conveyance of *William*, whereby is provided for the full and due Execution of the Trust, according to the Lady *Mildmay's* Will, Exhibited their Bill in *Chancery*, to set

12480

aside the Deeds, Releases and Conveyances to Mr. *Ducket*, and to have *Ducket* Reconvey the Estate to the Uses of the Lady *Mildmay's* Will.

And the Court of *Chancery* taking notice of the several Frauds put upon the Court, in eluding the first Decree, and it being fully proved, both under *Ducket's* own hand, and by Witnesses, That he owned since the Conveyances in 1674. That what was done, was onely for the Good of *William Mildmay*, and in Trust for him; and there being several other clear proofs of such Trust, the said Court did relieve the said Plaintiffs, forsetting aside such Deeds, and for Mr. *Ducket's* Reconveying, and paying 4300 *l.* Principal Money, confessed to be received by him, and his accounting for the Residue of the Profits of the Estate: and yet were so kind to him, to allow him 550 *l.* per Ann. for maintaining the said *William* till his Marriage in 1676. though he could no wayes spend 150 *l.* per Ann.

But he being not satisfied, has occasioned this Appeal, and stay'd Proceedings against him for the said Money, to the great danger of losing the same: And his Case being so Unjust, Unreasonable, and Foul, the Defendant in this Appeal doubts not your Lordships Justice, to dismiss the Petition, and award good Costs for this Vexation, the Appellant having given Security in *Chancery* to pay such Costs, when your Lordships shall award the same.